

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17143

254

ROBERT H. CROSBY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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United States Court of Appeals
for the District of Columbia Circuit

OCT 19 1962

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CLERK

QUESTIONS PRESENTED

1. Is it error not to grant a "voir dire" examination on the voluntariness of the confession where none is properly asked for, and where the precise equivalent had already been held in a preliminary motion?

2. Is a statement made by appellant properly admitted in evidence where the appellant contends that the arrest was illegal and therefore the statement is inadmissible? And where an analysis of the facts shows that the arrest was proper?

3. Was appellant denied a fair trial, because of conduct of the District Court and the prosecutor, where a reading of the record and an analysis of the incidents complained of show that there was no abuse of discretion on the part of the trial judge and the prosecutor conducted himself properly throughout the trial?

(I)

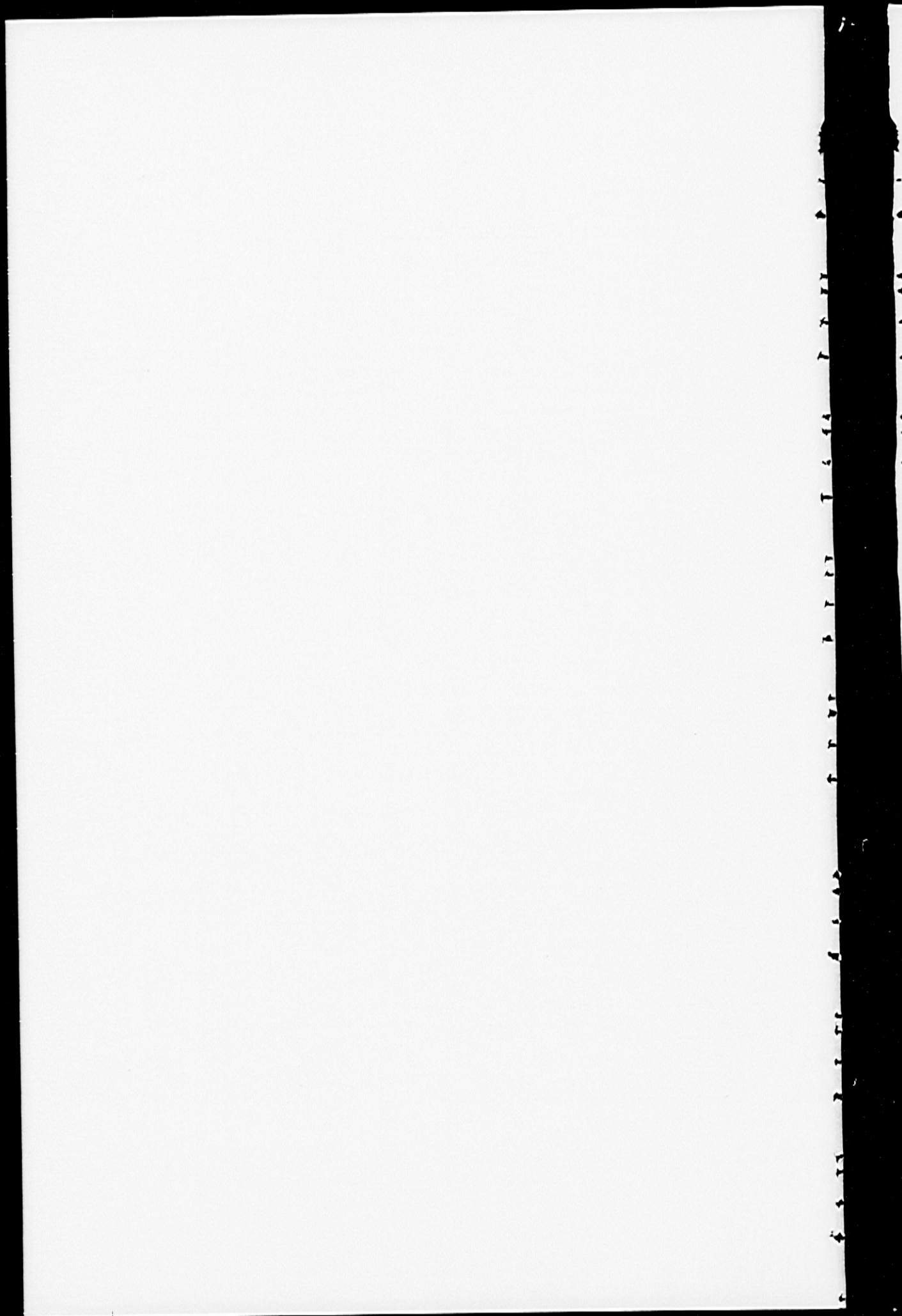
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In an indictment filed February 7, 1961, appellant was charged with assault with intent to commit robbery in violation of D.C. Code, Title 22, Section 501. On February 17, 1961, a motion to suppress evidence was filed. This motion was heard and denied on March 3, 1961. The jury trial began May 1, 1962, and on the following day appellant was found guilty as charged. Appellant was sentenced to 3 to 10 years imprisonment.

Pre-trial hearing

On February 17, 1962, appellant filed a motion to suppress the confession, fingerprints and a line-up identification (J.A. 2). In support of this motion, four defense witnesses were called. The first witness was Shirley Johnson, girl friend of appellant. She testified that she was in the apartment on the night of the arrest with appellant Crosby. At about 4:30 a.m. on January 23, 1961, there was a knock at the door, Miss John-

son asked who it was and the reply was the police (J.A. 5). She answered the door and the police entered the room (J.A. 6). The police looked behind chairs, under the bed and found appellant hiding under clothing in the closet (J.A. 6). He was dragged out of the closet, beaten by both officers, and put in handcuffs (J.A. 6). Appellant dressed and was taken to No. 9 Precinct along with Miss Johnson. At the precinct appellant was picked out of a line-up by the complainant (J.A. 7). Miss Johnson testified that she saw no warrant, nor did she volunteer to let the officers in her apartment (J.A. 8). She did admit that on one other occasion, the police came and appellant got out the window (J.A. 9).

Helen Tatum, the mother of Shirley Johnson, testified: "I heard Robert Crosby crying out like a man who was being beaten or hurt" (J.A. 10). When she went to his room he was "there on his knees with his hands fastened behind him" (J.A. 10).

Detective Charles Samen, the investigating officer, testified: "We received information from a reliable informant, previously known to be reliable, that Robert Crosby was involved in this robbery" (J.A. 11). The complainant was contacted and he identified the appellant from pictures of nine suspects (J.A. 11). Officer Samen went to the apartment at 1354 Columbia Road NW., between 3:30 a.m. and 4:30 a.m. with an arrest warrant for Robert Crosby (J.A. 12). Detective Samen's partner, Officer Dennis, knocked at the door and in reply to the question, "Who is it?", he answered, "The police". (J.A. 14). Looking through the bathroom window, Detective Samen was able to see appellant at the window (J.A. 15). Shortly thereafter, Samen went inside and told the occupants they were there to arrest appellant (J.A. 15). Appellant was found hiding under clothes in the closet (J.A. 13). Neither Detective Samen nor Dennis hit the appellant (J.A. 14). He was taken to No. 9 Precinct at about 5:00 a.m. and there identified in a line-up by the complainant, Mr. Hadeed (J.A. 15). A statement was taken from the appellant at approximately 5:25 a.m. and it was finished by 5:45 a.m. (J.A. 16). It was freely given by appellant without any coercion or duress involved in getting the

statement (J.A. 16) nor was any intimidation or threat used against him (J.A. 16).

The final witness was appellant Robert H. Crosby who testified that his home was at 1354 Columbia Road NW., Apartment 10, where he was arrested (J.A. 16). He was sleeping with his girl friend at about 3:30 a.m. when a knock on the door woke him. He looked out the window and saw two police officers and a detective standing in the hall, so he got in the closet and covered himself with clothes (J.A. 17). Shirley, his girl friend, opened the door and the police came in and searched around the room. They found appellant hiding in the closet. They dragged him out of the closet and knocked him down on the floor, and hit him. His nose bled a little bit and he was handcuffed as tight as they could get them (J.A. 17). Appellant testified that he was handcuffed and taken to No. 9 against his will. He states that he was hit two or three times while at the apartment. He was fingerprinted and identified in a line-up but this was not done voluntarily. "I was under fear. They had hit me prior to taking me to the station house and I didn't want them to beat me no more" (J.A. 18). Appellant made a statement but this also was done involuntarily, he was in fear. "I don't want to get beat up because I seen what police do to people"; as a result of this fear he made a statement (J.A. 18). Appellant admitted he was not beaten at the precinct, nor was any medical treatment required (J.A. 19).

The hearing was continued one week until Friday, March 3, 1961, in order for the defense counsel to determine if a warrant had been issued. The defense attorney stated, "my finding was that they did find that a warrant had been issued and that it was applied for on December 19 and issued December 20" (J.A. 20). The Court denied the motion, but committed the appellant for 30 days, under Title 24, D.C. Code, Section 301.

The trial

George K. Hadeed, the complainant, testified that his wife owns a store at 1422 15th Street NE., and that he works there. On the afternoon of December 19, 1960, he was working alone in the store (J.A. 24). Around 2:30 p.m. a person came in the store and asked for a piece of candy. Mr. Hadeed handed him

a candy bar and offered him the change. At this point, the individual pulled out a knife and said, "son of a bitch, open." Hadeed grabbed his hand and they tussled. Hadeed was cut on the hand and hit in the eye. Hadeed got the knife away from the person and he ran away (J.A. 25). At this point, over objection, Mr. Hadeed identified his assailant. The defense attorney stated, "Your honor, I wish to make a motion on the grounds of an illegal arrest" (J.A. 25). The Court denied the motion. The prosecutor pointed out that this motion had been already heard (J.A. 26).

Further testimony brought out that Mr. Hadeed identified the appellant in a line-up at No. 9 Precinct. This was also objected to. According to Hadeed appellant stated at the line-up: "I go in to rob you but I don't take any money" (J.A. 27).

Charles C. Samen, the investigation officer, was the next Government witness. Detective Samen testified that as a result of his investigation, he was looking for Robert Crosby. The defense attorney objected, "At this time I think the officer is about to go into the arrest and I would like to move to suppress." The Court stated, "You are premature in all these objections" (J.A. 28). Later, Detective Samen stated he arrested the appellant with a warrant, hiding in his closet at 1354 Columbia Road NW. (J.A. 28). The appellant was taken to No. 9 Precinct and placed in a line-up. Mr. Hadeed identified him in the line-up (J.A. 29). The appellant stated at this time that he was the one in the store but he did not get the money (J.A. 30).

Shortly thereafter, appellant made a statement which was taken down by Detective Samen. When Detective Samen was asked to identify the statement, the defense attorney objected and moved the jurors to be excluded (J.A. 29). The statement was identified and the prosecutor asked to approach the bench. The prosecutor stated, "If your honor please, I have no objection to satisfying the desires of counsel if he wants to go into this statement. We have gone into it before. On a motion to suppress he made an exact motion like this." The defense attorney stated, "Your honor, I think I am bound in behalf of the defendant to have the jurors excluded." The Court: "For

what?" "Because the arrest was illegal." The Court: "Where is the arrest illegal? You show it. Here is an arrest made with a warrant. Heavenly day, man." The motion was denied (J.A. 31). Detective Samen stated he took the statement word for word from appellant. Appellant signed it before Officers Samen and Dennis and also his girl friend, Shirley Johnson. Again, defense attorney objected for the reasons just stated at the bench (bad arrest) (J.A. 32). There were no promises given to appellant nor inducement of any kind in return for the statement. Nor was there any coercion or threats involved (J.A. 32). He was advised that any statement he might give might be used against him in court, and he was not compelled to make any statement (J.A. 33).

During the cross-examination, the prosecutor again asked to approach the bench to inquire if it was defense counsel's tactics to inject police brutality into the trial (J.A. 35). The defense attorney stated, "There was a confession and I think the confession was coerced and that that is part of the coercion." The Court permitted the defense to continue their cross-examination on this point (J.A. 35). At this time no objection was made to the Judge's ruling nor did counsel ask to have the jury excused. Detective Samen denied that he or Officer Dennis had touched the appellant in any fashion other than to make a normal arrest (J.A. 36).

The final Government witness, Private Thomas B. Dennis, testified that he, along with Detective Samen, went to 1354 Columbia Road N.W., at 4:30 a.m. on the 23d of January. He knocked on the door and in response to, "Who is it?", he replied, "The police." He waited five or ten minutes and a young lady opened the door and he went inside (J.A. 38). The appellant was found hiding in the closet (J.A. 39). He was taken to No. 9 Precinct and identified in a line-up by Mr. Hadeed (J.A. 39). He gave a written statement witnessed by Officers Samen and Dennis and his girl friend, Shirley Johnson. Private Dennis was asked to identify the statement and defense counsel objected. "Your honor, again I object to this line of questioning on the ground stated before." Objection was overruled and Private Dennis identified the statement (J.A. 40). Dennis also testified that he saw the warrant for appellant's arrest on

that day (J.A. 41). He did not hit or kick appellant nor did he threaten him (J.A. 42). The Government rested. The defense rested (J.A. 46).

At the end of all the evidence, the prosecutor offered appellant's statement into evidence. The Court stated, "You can make any objection you have to it." Defense attorney, "I object on the ground that the arrest was illegal" (J.A. 44). The Court overruled the objection and it was noted, since the arrest was brought up in front of the jury, that a motion to suppress had already been argued (J.A. 44). The defense attorney made a motion for acquittal on the grounds that the Government failed to establish a prima facie case (J.A. 46). The motion was denied. The prosecutor asked that the defense counsel should be admonished for injecting police brutality and failing to put on any evidence as a basis for it (J.A. 47).

STATUTE AND RULES INVOLVED

Title 22, District of Columbia Code § 501 provides:

Assault with intent to kill, rob, rape, or poison.— Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring or cistern of water, shall be sentenced to imprisonment for not more than fifteen years.

Rule 4(c)(3), Federal Rules of Criminal Procedure provides:

Manner.—The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suit-

able age and discretion then residing therein or by mailing it to the defendant's last known address.

Rule 5(a), Federal Rules of Criminal Procedure provides:

Appearance before the Commissioner.—An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

Rule 41(e), Federal Rules of Criminal Procedure:

Motion for Return of Property and to Suppress Evidence.—A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for the use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

SUMMARY OF ARGUMENT

I. Appellant failed to properly request a hearing without the jury present on the grounds of an involuntary confession at the trial level and is now precluded from raising it on appeal. Appellant was permitted to cross-examine government witnesses extensively on this point even though he put on no testimony to substantiate his claim. Assuming, however, proper objection was made at the trial and denied by the trial judge, that denial is harmless error at best and furnishes no grounds for reversal. The appellant had a pre-trial motion to suppress and at this motion the question of coercion was exhaustively examined. The result of this hearing shows unmistakably that the question of voluntariness was one for the jury if appellant wished to raise the point.

II. Statements made by appellant are admissible whether or not the arrest was legal. The legality of the arrest may not be seriously questioned, however, in this case. The testimony of the witnesses clearly shows that at the time of the arrest there was a warrant outstanding for the arrest of appellant. The police came to his apartment in the early morning hours, knocked on his door, announced themselves and when the door was finally opened, entered and placed the appellant under arrest. The conduct of the police in this instance was proper in all respects.

III. Appellant had a fair trial. Neither the District Court nor the Assistant United States Attorney acted improperly during the trial. Counsel cannot complain of admonishment from the Court where the Court is acting properly. Appellant's various allegations of prejudicial conduct by the trial judge and government counsel are totally without substance.

ARGUMENT

I. The District Court did not err in denying appellant the right to a *voir dire* examination where none was asked for, nor was such refusal harmful

Appellant's argument is fatally defective on at least two grounds. Nowhere in the record does it appear that appellant made any objection on the grounds that the confession was in-

voluntary. Likewise, appellant did not ask for a hearing without the jury on these grounds. Secondly, even if such a request were made and denied, the denial could not possibly be harmful to appellant, since he had the precise equivalent of such a hearing at his pre-trial motion to suppress.

Nowhere in the record can appellant point to a statement or group of statements and say that here is where counsel asks the jury to be excused on the grounds of a coerced confession. Many times admittedly he objects on the grounds of a bad arrest and asks for the jury to be excused. When the complainant was going to identify defendant in the courtroom, counsel objected, "I wish to make a motion on the ground of an illegal arrest" (J.A. 25). Counsel renewed this objection when the complainant was testifying as to the line-up identification (J.A. 26) and again at the identification of the knife, but neither time was the reason for the objection stated (J.A. 27). The trial judge acted correctly in overruling these objections since there was no indication that counsel was broadening his objections to encompass more than the alleged illegality of the arrest. " * * * It is within the discretion of the court whether to entertain a motion at the trial." (R. 41(e), F.R. Cr.P.) That he was basing his objections at this point solely on this ground seems to have been the understanding of both the trial judge and the prosecutor (J.A. 26). To this point, the confession had not been mentioned or referred to at any time. Certainly then, there was no reason for the trial judge to assume that the objection went to anything but the arrest. When the appellant's confession was first identified by Det. Samen, counsel objected and asked that the jurors be excused (J.A. 30). But he specified no ground for the request, and the objection to the admissibility of the statement was perfectly consistent with his theory that the illegality of the arrest tainted all the evidence. Appellant suggests that the prosecution mistakenly told the judge that the question of a coerced statement had been gone into at the pre-trial motion (Appellant's brief, p. 12). Although it is true that the question of a coerced confession had been clearly gone into at the motion to suppress, this was not the representation made to the judge by the prosecutor. The prosecutor stated: "On a motion to suppress * * * he made an exact mo-

tion like this (J.A. 31). The motion was denied. If he wants to go into it again * * * (J.A. 31). Counsel then clearly indicated he still was basing his motion on the illegality of the arrest. He said: "Your Honor, I think I am bound in behalf of the defendant to have the jurors excluded." When the court asked the reason, counsel replied: "Because the arrest was illegal" (J.A. 31). Although appellant's counsel, through questions and comments, subsequently made a number of references to the circumstances surrounding the defendant's statements (see J.A. 34, 35, 42, 43), yet he never asked the jury to be excused for a hearing to determine the voluntariness of the confession. When the defendant's statement was finally offered into evidence, his objection was still not in terms of coercion. The court stated, "You can make any objection you have to it." Counsel said: "I object on the ground that the arrest was illegal." Since the trial judge knew that a preliminary hearing had already been heard on the question of illegal arrest, he had no obligation whatsoever to hear it again (J.A. 44). Nowhere, then, can we find proper objection made in the record, at the trial level. The Appellate Court sits in judgment upon actions of the trial court which are challenged by proper objection and cannot, except under the plain error doctrine, search for errors which are not presented to the trial court. *Fogarty v. United States*, 263 F. 2d 201 (5th Cir. 1959), *Johnson v. United States*, 110 U.S. App. D.C. 187, 290 F. 2d 378 (1961) *Linburgh Williams v. United States*, D.C. Cir., No. 16,708, Sept. 27, 1962.

If the nature of his request was not made clear to the trial court, the court can hardly be reproached for not granting it. Cf. *DeLorenzo v. United States*, 95 U.S. App. D.C. 74, 219 F. 2d 506, cert. denied, 349 U.S. 964.

Appellant apparently contends that this case is similar to *Bray v. United States*, D.C. Cir., No. 16835, Decided May 24, 1962. However, in *Bray* the defense attorney clearly states that he presumed at this time the government would introduce a confession which was obtained from the defendant. He stated: "I think the court should hear the evidence with respect to the admissibility of all this evidence without the presence of the jury." The court stated this colloquy fairly reflects a request for and a denial of a hearing on the voluntariness of the

confession. In the instant case there is no such clear request for a hearing on the question of voluntariness. Every time counsel was asked for his specific objection, he stated, because the arrest was illegal (J.A. 25, 31, 32, 44). Further, in *Bray* the appeals court was not able to determine what Bray would testify to if he did take the stand. However, here the court knows exactly what the defendant would testify to from the record of the preliminary hearing and can clearly conclude that, as a matter of law, it would not be excluded by the trial court.

Assuming, however, that a proper objection was made and denied by the trial court, that denial was demonstrably harmless to the appellant and furnishes no possible ground for reversal. At the pre-trial hearing on the appellant's motion to suppress the confession and other evidence, the issue of coercion was thoroughly exhausted. Appellant presented his full case on the question and it is clear as a matter of law that the confession would not be held involuntary. Granting appellant's motion to suppress was initially grounded on the allegation of illegal arrest, detention, search and seizure, a substantial part of the hearing on the motion was actually devoted to the question of whether the confession was freely given. Counsel in his opening statement on the motion stated that the police "drug (sic) the defendant out of the closet, handcuffed him there with his shorts on, had him stand up, beat him * * *" (M. Tr. 4) Shirley Johnson testified that the officers beat him with their fists (J.A. 6). Her mother, Helen Tatum, was called for the sole purpose to show coercion since she could hardly testify to the arrest, not being in the room at the time. Defense counsel examined Officer Samen on whether he or his partner had hit appellant and the answer was no (J.A. 14). Counsel also inquired whether or not they threatened or intimidated the appellant and again the answer was no (J.A. 16). In the Government's examination, Det. Samen stated the statement was given freely and voluntarily, without any promises. He further stated there was no coercion or duress used nor was appellant beaten or struck (J.A. 16). When the appellant took the stand he was questioned extensively "to the matter of coercion and voluntariness of the confession; clearly then, this type of examination of the witnesses is unmistakably directed at the voluntariness of the confession.

The Court in *Wright v. United States*, 102 U.S. App. D.C. 36, 250 F. 2d 4 (1957) states, "to substantiate a defendant's contention that his confession was involuntary, it is generally necessary for him to take the stand. Since it is a matter, of course, that the defendant should be allowed to testify to the involuntariness of his confession without waiving his privilege of self incrimination * * * it follows that, when he requests it, he should be given a hearing without the jury."¹ Appellant received precisely this at his pre-trial motion. Appellant did not have to expose himself to any of the dangers which concerned the court in *Wright*. He had his day before a judge, without a jury present, and he gave his entire version of the events surrounding his confession. He also produced two witnesses in support of his position. His counsel was able to examine the arresting officer on the issue. All this produced the conflict which made it inevitable that the confession go to the jury in accordance with the law in *Wright*. "In this jurisdiction, by law and practice, the court first holds a preliminary hearing for the purpose of determining whether there is evidence from which the jury could properly conclude that the confession was voluntary. If the court concludes there is no such evidence, it must exclude the confession; but if it finds there is evidence on the basis of which it might be held to be voluntary, then the question of voluntariness is submitted to the jury" *Ibid*; see also *McAffee v. United States*, 70 U.S. App. D.C. 142, 105 F. 2d 21 (1939).

This case is thus far stronger from the Government's point of view than was *Tyler v. United States*, 90 U.S. App. D.C. 2 193 F. 2d 24 (1951), in which the court held according to *Wright*, "that where a preliminary hearing was omitted because of a misunderstanding between court and counsel and the evidence showed there was ample basis for a conclusion of voluntariness, it was not prejudicial error to have submitted the question to the jury without a preliminary hearing." The court further pointed out, "* * * obviously, therefore, no harm was done by the fact that the evidence was heard in the first instance before the jury. Clearly, the defendant suffered no prejudice for a preliminary hearing would have had the same results."

¹ *United States v. Carignan*, 342 U.S. 36. Is in accord with the rule of *Wright*.

In the instant case, unlike *Tyler*, there was a preliminary hearing on this issue, in everything but name. In *Tyler* the defendant took the stand and this fact involves at least an element of uncertainty as to whether the defendant there might have been harmed by the failure to hold a preliminary hearing outside the jury's presence. This case has none.² If in fact the trial judge did deny the request for a hearing, his denial is at best harmless error.

II. Appellant's statement was properly admitted into evidence

Appellant's statement was properly admitted against him because the illegality of an arrest is not a ground for exclusion of a confession when there is neither coercion nor an illegal detention in violation of Rule 5. *Smith v. United States*, 103 U.S. App. D.C. 48, 254 F. 2d 751 (1958), *cert. denied*, 357 U.S. 937; *Walker v. United States*, 197 F. 2d 287, 289 (2d Cir. 1952); *Dailey v. United States*, 261 F. 2d 870, 872 (5th Cir. 1959); *Wong Sun v. United States*, 288 F. 2d 366, 371 (2d Cir. 1961).

The legality of the arrest cannot be seriously questioned in this case. Appellant concedes in his brief (appellant's brief p. 14) and the testimony of the defendant's counsel and the prosecutor clearly shows (J.A. 30, 43 & 44) a warrant was issued by the Chief Judge of the Municipal Court for appellant's arrest. The manner of execution of the arrest was proper in all respects. Although the record is not clear as to whether the arresting officers had the warrant in their possession at the time of arrest, they were acting pursuant to its authority. Both officers testified they knew the warrant had been issued and they had seen it. (J.A. 33 & 41). There is no requirement that an arresting officer acting pursuant to a warrant actually have the document on his person when he makes an arrest. Rule 4(c)(3) Fed. R. Crim. P. *Gatewood v. United States*, 93 U.S. App. D.C. 226, 209 F. 2d 789 (1953). The police stated their purpose for being there when they entered the apartment (J.A. 15). However the appellant was well aware of what the police

² The trial judge instructed the jury "that evidence of such an oral confession or admission by the defendant should be received and viewed carefully" (J.A. 49)

were doing there without being so informed. He admitted that he had been hiding from the police for over a month and that he escaped out of the window on one occasion when the police came to arrest him (MTR. 43). This fact is verified by his girl friend Shirley Johnson (J.A. 9). The police also were well aware that appellant knew their purpose since he had successfully escaped from them in the past. Appellant further testified that he heard the knock on the door, saw the police outside and then hid himself in the closet. Hence the purpose of the police was perfectly clear to appellant. In *Miller v. United States*, 357 U.S. 301 (1958) the court states: "It may be that without an express announcement of purpose, the facts known to the officers would justify them in being virtually certain that petitioner already knows their purpose so that an announcement would be a useless gesture."

The entry into the apartment was in an orderly fashion and had none of the earmarks of the forcible police invasion in *Miller*. In *Miller* not only did the police fail to properly announce themselves but also there was an actual breaking down of the door. In the instant case there was no failure of the police to announce themselves. Shirley Johnson testified she asked who was there and the reply was the police. (J.A. 5). She also testified she opened the door and they walked in (J.A. 6). Officer Dennis testified he waited 5 or 10 minutes before the door was opened. (J.A. 38). Both officers denied using any force to enter. Hence Miller is completely satisfied. The police announced themselves, stated their purpose and entered without any breaking.

Appellant also questions being brought to a United States Commissioner rather than a magistrate of the Municipal Court for a preliminary hearing. There is not the slightest indication anywhere in the record that the arresting officers or the United States Attorney's Office acted with improper motives in bringing appellant before the Commissioner rather than Municipal Court. Appellant's suggestion that the officers engaged in "forum shopping" is aimless speculation in the absence of any reason proffered why it should be more favorable to the Government to have a Commissioner rather than a Municipal Court Judge make the decision whether there was probable

cause to hold appellant for the grand jury, the only issue decided at a preliminary hearing. Rule 5(a) Fed. R. Crim. P. is clear on this point.³

III. The conduct of the Trial Court and prosecutor was perfectly proper and did not deprive appellant of a fair trial

(a) Prosecutor's summation

The prosecutor's closing argument was well within the bounds of propriety. It was proper argument calling attention to defense counsel's tactic of employing prejudicial questions on cross-examination without any subsequent proffer of testimony to justify asking them. In cross-examination of both police officers the defense counsel asked did you hit him or threaten him (J.A. 35, 35, 42 and 43). The witnesses answered no to all these questions. The defense offered no evidence to support asking any of them. These questions were highly prejudicial to the government. The defense counsel had an obligation to support them by introducing evidence that showed some likelihood that the charges contained in the questions were true. See *Jackson v. United States*, 111 U.S. App. D.C. 353, 297 F. 2d 195 (1961). Cf. *Lee Won Sing v. United States*, 94 U.S. App. D.C. 310, 215 F. 2d 680 (1954). The trial judge himself had expressed the view that if the trial had produced no evidence of brutality, defense counsel had no basis for raising the issue, and the prosecutor could properly point this out to the jury (J.A. 42). His reasons for not calling appellant to the stand are understandable, but he did not even call the other two witnesses who had given testimony bearing on alleged police coercion at the pre-trial motion. Whatever his reasons were for not indicating a basis for his questions, whatever his good faith in asking them, Government counsel

³ Rule 5(a), Federal Rules of Criminal Procedure, provides: "An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a Commissioner or other officer, a complaint shall be filed forthwith."

was surely entitled to try to remove the taint by pointing out to the jury that the questions had not been supported.

The prosecutor's statement that "which is typical of counsel" and "that is typical of counsel" is alleged to have prejudiced the jurors (J.A. 47 and 48). This argument is essentially a disparagement of the jury system for it pre-supposes that jurors are incapable of separating a defendant from his attorney and will regard comments by the prosecutor, directed to defense counsel, as directed to the merits of the defense. The court in *Fabianich v. United States*, D.C. Cir. No. 16,784, decided May 10, 1962, held not prejudicial far stronger statements by the prosecutor.

(b) Conduct of the court

The comments of the court should not be read in a vacuum, out of the context in which they were made. The comments of the court at J.A. 25 and 26 were all directed to the same point and made for the same reason, the purpose being to have counsel save his objections to the admission of evidence for a time when the court was ready to receive them. The trial court's response to the remarks of the defense counsel at J.A. 28 show clearly that the court was merely trying to preserve a proper order of presentation of objections and was not harassing or depreciating defense counsel. The court has a duty to keep the trial proceedings in an orderly fashion. Counsel cannot complain of admonitions based on proper rulings of the court. See *Coupe v. United States*, 72 U.S. App. D.C. 86, 90, 113 F. 2d 145, 147 (1940), *cert. denied*, 310 U.S. 651. The last cited comment concerning defense counsel's possession of the ~~sub~~ ^{warrant} ~~poena~~ was also lacking in prejudice to the appellant.⁴ When the trial court asked how defense counsel happened to have the arrest warrant, Government counsel replied that he must have subpoenaed it (Tr. 61). This would negate any possible thought in the minds of the jury that it was improper for the defense counsel to have the warrant. In any case, jurors are

⁴The court instructed the jury, "I have not intended to express nor intimate any opinion as to what witnesses are worthy of belief or disbelief, what facts are established, what facts have not been established, or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of those matters, I instruct you to disregard it." (Tr. 83)

intelligent, and understand that a defendant at the bar should not be prejudiced because his counsel's conduct is not always approved by the court. *Henry v. United States*, 50 U.S. App. D.C. 366, 372, 273 F. 2d 330, 336 (1921), *cert. denied*, 257 U.S. 640.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,

VICTOR W. CAPUTY,

ROBERT D. DEVLIN,

Assistant United States Attorneys.

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,143

ROBERT H. CROSBY,

v.

UNITED STATES OF AMERICA,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 20 1962

Joseph W. Stewart

CLERK

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JOINT APPENDIX

[Filed Feb. 7, 1961]

[INDICTMENT]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding A Criminal Term

Grand Jury Impanelled on December 22, 1960, Sworn in on January 3, 1961

UNITED STATES OF AMERICA	)	Criminal No. 89-61
v.	)	Grand Jury No. 77-61
ROBERT H. CROSBY,	)	Violation: 22 D.C.C. 501
Defendant	)	(Assault With Intent to Commit Robbery)

The Grand Jury charges:

On or about December 19, 1960, within the District of Columbia, Robert H. Crosby feloniously and wilfully did make an assault on George K. Hadeed, with intent, by force and violence and against resistance and by putting in fear, to take and carry away valuable goods and property from the person and from the immediate actual possession of the said George K. Hadeed.

/s/ Oliver Gasch
Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ J. W. Beall
Foreman.

[Filed Feb. 10, 1961]

PLEA OF DEFENDANT

On this 10th day of Feb., 1961, the defendant Robert H. Crosby, appearing in proper person and by his attorney Wilbert L. Whitsett, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of

ALEXANDER HOLTZOFF
Presiding Judge
Criminal Court #1

* * *

* * *

[Filed Feb. 17, 1961]

MOTION TO SUPPRESS EVIDENCE

The defendant, Robert H. Crosby, by counsel moves that the following property which was illegally seized from him in the District of Columbia without a warrant be suppressed as evidence:

1. Confession.
2. Fingerprints.
3. Line-up identification.

As grounds for this Motion, the defendant Crosby alleges that his arrest on January 23, 1961, and his detention pursuant thereto was illegal, and the property obtained from him was taken by an unreasonable search and seizure within the meaning of the Fourth Amendment to the Constitution of the United States.

Defendant Crosby requests an oral hearing on this Motion so that he may produce evidence upon the issue of the legality of the arrest and detention pursuant thereto.

/s/ Wilbert L. Whitsett
Attorney for Defendant
Legal Aid Agency for the
District of Columbia

[Filed July 16, 1962]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
Friday, February 24, 1961

The above-entitled matter came on for hearing on motion to suppress evidence before the HONORABLE EDWARD A. TAMM, Judge, United States District Court for the District of Columbia.

* * * * *

3

MR. WHITSETT: Your Honor, this is a motion to suppress items, to wit, a confession, fingerprints, minor identification and other things which may be mentioned during the course of this argument.

* * * * *

4

5

Subsequently, he was removed to the Ninth Precinct where he was placed either at the Ninth Precinct or at Headquarters in a line-up. A certain person was called, that is the complaining witness, to identify this particular individual as Robert Crosby.

After the identification was made, the police started getting a confession from the defendant.

My position is that all these procedures which took place without the officers having an arrest warrant or a search warrant and knowing for some period of time that the defendant was in the Metropolitan Area, did not afford themselves the opportunity to apply for a search warrant or an arrest warrant and that the officer who made the arrest was a long-experienced officer of the Metropolitan Police Force.

* * * * *

6

I think further, the records of this Court, to wit, the jacket which Your Honor has before you, would indicate that no warrant was ever applied for and the first time any action was taken in an official manner was when the complaint was signed by Officer Samen before the United States Commissioner.

When I have produced evidence to support these points, I feel that the Court will grant the proper relief which we seek.

* * * * *

MR. CAPUTY: The facts as I believe the evidence will show are that on December 19, the date named in the indictment, this defendant went to a store, bought some candy and while the owner was still at the register, he pulled out a knife in a struggle with him and subsequently this individual was charged with the crime of assault with intent to commit robbery.

The evidence will show that on that same day the complaining witness, shortly thereafter, or a few hours thereafter, out of a group of pictures, identified the picture of this defendant.

7

The evidence will show that the police officer Samen -- I believe he was with another officer -- on the same night went to the premises in question where Miss Shirley Johnson lived and was informed that she didn't know him and that he did not live there.

Then the police did a little more investigating and they found out that he was there; and the officers on that very night, were going back again to the premises when Detective Samen was involved in an automobile accident and was hospitalized that same night and got out of the hospital on the 20th of January. But I believe there was an arrest warrant which had been secured by the police the day after; I believe there was.

THE COURT: You mean the day after the offense?

MR. CAPUTY: Yes, the day after the offense. I believe there was, Your Honor.

THE COURT: Was there a search warrant obtained for the premises?

MR. CAPUTY: No.

THE COURT: Why not?

8

MR. CAPUTY: I don't know. They had an arrest warrant, but no search warrant. I believe, if Your Honor please, that a search warrant is not necessary. They had an arrest warrant.

And even if they didn't have an arrest warrant, I believe the actions of the police officers are justified: They went back there on the 23rd. When they got there on the date in question, they knocked on the door and the officer will tell you there was a man's voice in that apartment and that

was around 4:30 in the morning; that a woman did come to the door and the door was closed. One of the police officers went into the public bathroom in the rooming house and went out on to the fire escape, and trying to come out of the window was this defendant at 3:30 in the morning. Then he went back inside and he went to the front door and the woman came to the door and they went inside and arrested this man secreted in the closet.

As to the suppression of the confession, Your Honor, I don't see how it can be suppressed. Whether that arrest was legal or illegal, this confession should not be suppressed and this is supported by the decision in Eugene Smith. 103/48

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SHIRLEY JOHNSON

called as a witness on behalf of the defendant, having been first duly sworn, took the witness stand, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHITSETT:

Q. Miss Johnson, will you speak very loud so His Honor may hear you. Is your name Shirley Johnson? A. Shirley Ann Johnson.

10

Q. Do you live at 1354 Columbia Road, N.W., Apartment 10?
A. Yes, I do.

Q. Were you occupying that apartment on January 23, 1961, on or about 3:30 to 4:30 a.m. on that morning? A. Yes, sir.

Q. Was the defendant, Robert Crosby, sharing your apartment with you at that time as his home? A. Yes.

Q. Did anything unusual happen about 4:30 a.m. on the morning of January 23, 1961? A. Yes.

Q. And will you tell the Court what happened? A. Well, about 4:30 somebody knocked on the door and I asked who it was. They said the police. So when I got up to open the door, there was a detective at the door and one was in the bathroom looking out the window, and they came in.

Q. Did you ask the officer to come in or how did he get inside the

door? A. I opened the door and he walked in.

Q. What were you doing at the time that you opened the door?

11 A. Well, I cracked the door first. I was fastening up my skirt.

Q. When you say "cracked the door," what do you mean? A. I opened the door about that much (indicating).

Q. How did the door get all the way open? A. The other detective, he pushed the door open.

Q. Was that the detective whom you saw in the court room today?

A. No, it wasn't Detective Samen, it was the other one with him.

Q. What happened then? A. They started searching my room for Robert Crosby.

Q. At that time were you shown any search warrant or arrest warrant by either officer? A. No.

Q. Describe what they did as they searched your premises?

A. They looked behind the chairs, underneath the bed and in the closet; and that is where they found him.

Q. Did they ask you whether or not you would allow them to search your premises? A. No, they didn't.

12 Q. When they went into the closet, was the door open or closed?

A. Closed.

Q. What did they do when they went in the closet? A. Well, I had some clothes in there. They pulled the clothes out of the closet.

Q. As a result of pulling the clothes out of the closet, what did they find? A. They found Robert Crosby.

Q. Then what happened? A. They dragged him out on the floor and they both hit him.

Q. What did they hit him with? A. Their fists. I told them to stop and they told me to shut up.

Q. How was Mr. Crosby dressed at that time? A. Just his shorts.

Q. How were you dressed? A. I had a skirt and a sweater on.

Q. After you told the officers to stop hitting him and they told you to shut up, what did you do? A. I went and got my mother. By the time

13 she got in the room, they had the handcuffs on him.

Q. How was he handcuffed? A. Behind.

Q. What happened then? A. They had him standing up in the floor and my mother held him up while I put his pants on, then they took the handcuffs off him while he put his shirt on.

Q. Did they volunteer to take the handcuffs off him in order to put his shirt on? A. Yes, they did.

Q. Then what happened? A. They searched his coat before he put it on him, and then they told me to put my coat on they were taking me to the precinct.

Q. Did they take you with them? A. Yes, they did.

Q. Did they take Mr. Crosby with them? A. Yes.

Q. Were you voluntarily going, or did they take you against your will? A. They told me they were arresting me for harboring a criminal.

14 Q. Did they say anything about arresting Mr. Crosby? A. Well, I don't understand your question.

Q. Did they have hold of Mr. Crosby? Did they have handcuffs on him? A. Yes, he had handcuffs on.

Q. Did there come a time when both of you were taken from the apartment? A. Yes.

Q. Where were you taken from there? A. To No. 9 Precinct.

Q. What happened at No. 9 Precinct? A. Well, they had Robert Crosby in a line-up and they had the man from the store pick him out and then they asked him for a statement, and they told me that the only way that they would turn me loose is that I would either testify against him or -- either that I testify against him or they would hold me for harboring a criminal.

Q. Did the occasion come at which time you were brought to this building before the United States Commissioner? A. Yes.

Q. What happened to you? A. Nothing happened to me.

15 Q. Were you eventually released? A. Yes, I was.

Q. What happened to Mr. Crosby to your knowledge? A. He was

put under \$5,000.00 bond and taken to District Jail.

* * * * *

Q. Did you volunteer to let these officers in your apartment?

A. I opened the door and they came on it.

Q. Did you tell them they could come in? A. No, I didn't.

Q. Did you give them permission to search your premises?

A. No, I didn't.

* * * * *

CROSS EXAMINATION

BY MR. CAPUTY:

* * * * *

16 Q. On December 19th, didn't Detective Samen come to your place about 7 o'clock at night? A. Yes.

Q. Did you tell Detective Samen at that time you didn't know this defendant Crosby? A. Yes, I did.

Q. Haven't the police officers been down to your place about five other times and didn't you tell them you didn't know this person? A. No, I didn't.

Q. Well now, on the 23rd of January, when the police came there at 4:30 in the morning, he was in the house, was he not? A. Yes, he was.

Q. On this occasion when they came there, they told you that they were police officers and came to arrest him, did they not? A. They never told me what they wanted each time they came there.

17 Q. You have one room there, do you not? A. Yes.

Q. At the time the police came there, was Crosby trying to get out of the window? A. He did at one time.

Q. No. When the police came there, wasn't he trying to get out of the window? A. No.

Q. What do you mean "at one time he did try to get out"? What do you mean? A. You asked me a question.

Q. Yes. What do you mean "at one time he tried to get out of the window"? A. At one time he did.

Q. You mean one time on another occasion when the police were there? A. Yes.

Q. As a matter of fact, when they were there about four or five times, he would be there and on some occasions he was hanging down holding on the outside of the window when the police came there, wasn't he? A. No, he was not.

18 Q. What did he ~~do~~ on this occasion when you say that he tried to get out of the window when the police came there? A. He never tried to get out.

Q. He never tried to get out of the window? A. No.

Q. Tell me what you meant when you said "at one time he tried to get out"? A. He got out of the window on one occasion.

Q. He got out of the window when the police came there? A. Yes, sir.

* * * * *

19

HELEN TATUM

called as a witness on behalf of the Defendant, having been first duly sworn, took the witness stand, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHITSETT:

Q. Is your name Mrs. Helen Tatum? A. Yes.

Q. Are you the mother of Miss Shirley Johnson? A. Yes, I am.

Q. Do you live at 1354 Columbia Road, N.W., Apartment 8?

A. Yes.

20 Q. Do you recall the morning of January 23, 1961, approximately during the hours of 3:30 to 4:30 a.m.? A. Yes.

Q. Did anything unusual happen at your apartment that you were able to observe? A. Yes.

Q. Tell the counsel for the Government and the Court what you observed. A. I heard the policeman knocking on Shirley's door, my daughter. I put on my robe and went down the hall to see what was the matter. In going down the hall -- we share the same bathroom -- I stopped in the

bath. Shirley came to me crying and I heard Robert Crosby crying out loud like a man who was being beaten or hurt. She said, "Mommy, come here. They are beating up Bobby." And I went in the room and he was there on his knees with his hands fastened behind him. He had on no clothing except his underwear and they wanted him to go with them and they seemingly wanted him to go as he was.

I told him to lean against me and I asked Shirley to put on his trousers. His hands were still behind him. He had no undershirt on. * * *

* * * * *

21 THE WITNESS: I went out then after Shirley helped me get on his trousers. * * *

* * * * *

BY MR. WHITSETT:

Q. * * * A. Then he was then un-handcuffed and Shirley, I think, was putting on his shirt. I'm not too sure whether it was Shirley or he.

Q. Did there come a time when police officers removed him from the premises? A. Yes.

Q. Did there come a time when the police officers removed your daughter from the premises? A. Yes, they did.

Q. Was that the last time you saw them on that particular morning? A. Yes and no; I saw Shirley around 12:00 o'clock.

Q. That was after she returned home? A. Yes. I saw her when she came home.

* * * * *

MR. WHITSETT: Your Honor, I also have under subpoena Commissioner Sam Wertlieb. If the Court will take judicial notice of the file before it, it will indicate this defendant was arrested without a search warrant or arrest warrant and that the complaint was filed by Detective Samen on the morning of January 23 approximately, I think, 10:30 a.m.

THE COURT: The Court record indicates the filing of the complaint on January 24, charging this defendant with the commission of an offense on December 19; the complaint was sworn to on January 23 before the

United States Commissioner and is signed by Detective Charles C. Samen.

* * * * *

CHARLES C. SAMEN

called as a witness on behalf of the defendant, having been first duly sworn, took the witness stand, was examined and testified as follows:

23

DIRECT EXAMINATION

BY MR. WHITSETT:

Q. Your name is Detective Charles Samen? A. That is right.

Q. You are assigned to the Ninth Precinct? A. I am.

Q. You are a member of the Metropolitan Police Department?

A. I am.

* * * * *

Q. Detective Samen, did there come a time that you were assigned to investigate an alleged robbery? A. That is right.

Q. And when did you receive that assignment? A. Approximately
24 4:00 p.m. on the 19th day of December.

Q. And through your investigation, were you able to ascertain as to whether or not this defendant Robert Crosby was involved? A. Yes, I was.

Q. What information did you receive and what was the source of that information? A. We received information from a reliable informant, previously known to be reliable, that Robert Crosby was involved in this robbery. At approximately 5:00 p.m. on the 19th day I talked to the complainant, at which time I showed him nine pictures of suspects. He looked through five of the pictures and he put the rest of them down and he identified Robert Crosby as the subject that came in through his door and held him up with a knife.

Q. So that on December 19, 1960 at 5:00 p.m., you had information in your possession from a reliable informant, is that right? A. Yes, that is right.

* * * * *

25 Q. Now, addressing yourself to January 23, 1961 at the hour of

between 3:30 to 4:30 p.m., did you have the occasion to go to the premises 1354 Columbia Road, N.W.? A. I did.

Q. Did you have the occasion to go to an apartment at No. 10?

A. I went to a Room 10.

Q. A room No. 10? A. That is right.

Q. That room is located on the second floor? A. No, it was not.

Q. Was it on the third floor? A. It was.

Q. At that time, did you have in your possession an arrest warrant? A. I did.

Q. You had an arrest warrant? A. I did.

Q. Did you have a search warrant? A. I did not.

26 Q. Did the occasion come that you knocked on the door? A. I didn't, my partner did.

Q. Where were you? A. When my partner knocked on the door, I was standing behind him.

Q. Were you not in the bathroom at that time? A. Not when he knocked on the door, no.

Q. Who was your partner? A. Private Dennis.

Q. What is Private Dennis' first name? A. Thomas.

Q. Do you have a copy of that arrest warrant? A. No, I do not. It was taken back to the U. S. Court to be nulled. The defendant was brought to the U. S. Commissioners.

Q. Was there an arrest warrant outstanding for this defendant on January 23rd? A. There was.

Q. Do you have the arrest warrant?

THE COURT: The witness said he does not have it.

BY MR. WHITSETT:

Q. Who had the arrest warrant in their possession? A. Do you mean now?

27 Q. No, at that time. On January 23rd. A. I did.

Q. You did. Your partner didn't have it? A. No.

Q. Your partner was in front of you? A. That is right.

Q. Did there come a time that you searched these premises?

A. Yes.

Q. As a result of your search, who did you find? A. The defendant, Robert Crosby.

Q. Where did you find him? A. Hiding in the closet.

Q. Could he be seen from the door? A. No, he could not.

Q. Was he covered with clothing? A. He was.

Q. Did you have to open the closet door to ascertain if he was covered with clothing? A. We did.

Q. Did there also come a time when he was taken to the No. 9 Precinct? A. He was.

28 Q. And prior to that time, had he then been handcuffed by you? A. He was.

Q. At any time, did you present the arrest warrant to him? A. Do you mean did I show it to him?

Q. Yes, physically show it to him and let him read it. A. I did not.

Q. After he was taken to No. 9 Precinct, did there come an occasion whereby he was fingerprinted? A. He was.

Q. Did there come a time when he was placed in a line-up? A. He was.

Q. At that time were there certain identifications made? A. There was.

Q. And on the next morning, did you apply for a complaint against this defendant? A. I brought the defendant to the United States Commissioner.

29 Q. At the time he was in the closet, lying on the floor, how did he get outside of the closet? A. I had turned around to look under the bed and my partner discovered him hiding in the closet, and my partner brought him out of the closet.

Q. Did he drag him out? A. I don't know. I turned around and I saw the defendant with my partner.

Q. Did there come a time when either you or both you, Private

Thomas Dennis or Detective Samen, hit the defendant? A. No, sir.

Q. Did there come a time he was handcuffed? A. He was handcuffed.

Q. Was he handcuffed in the front or the back? A. He was handcuffed in the front and the back.

* * * * *

CROSS EXAMINATION

BY MR. CAPUTY:

Q. On December 19, after the defendant was identified and after the defendant was identified by the pictures, did you go to the premises of Shirley Johnson? A. I did.

30 Q. When you went to the premises of Shirley Johnson, did she tell you whether she knew him or not? A. She said she didn't even know him.

Q. When was that arrest warrant applied for, if you remember, sir? A. On the 20th of December.

Q. Did there come a time, sir, that you --

THE COURT: Just a minute. The warrant was applied for on December 20th. I think I would follow up and see if it was issued and, if so, when.

BY MR. CAPUTY:

Q. When was the warrant gotten? A. That I don't know, sir, I was in the hospital.

* * * * *

31 Q. Directing your attention to January 23, 1961, you went to those
32 premises again? A. I did.

Q. On this occasion, you had an arrest warrant? A. I did.

Q. What time was it you got to the premises? A. Approximately 4:30 a.m.

Q. Now, in your own words, tell us what you did from the time you got to the premises on January 23, 1961. A. My partner knocked on the door and after the second knock, I heard a voice from inside say, "Who is it?" We said, "The police." She said, "Just a minute."

Then, I heard several other voices, at which time the bathroom door was open in the hallway and I walked through the bathroom door to the bathroom window. I opened the bathroom window and I climbed out on to the fire escape, which is on the third floor.

Approximately after a minute or so, I saw the defendant by the window. Then he turned and went back to the darkened part of the room where I lost sight of him.

Then Shirley Johnson answered the door. I went back in through the bathroom window and into the room.

33 Q. Were you there at the time she answered the door? A. The door was open when I went back through the window.

Q. Did you go inside? A. I did.

Q. When you went there, did you tell them you went there to arrest this defendant Crosby? A. I did.

* * * * *

35

RECROSS EXAMINATION

BY MR. CAPUTY:

Q. Did there come a time after you arrested the defendant that you took him to No. 9 Precinct? A. I did.

Q. What time did you get to No. 9 Precinct? A. Approximately 5:00 a.m.

Q. Did there come a time at No. 9 Precinct that the complaining witness came there, Mr. Hadeed? A. He did.

Q. Was a line-up held there? A. Yes, sir.

Q. Was identification made by the complainant of any person in the line-up? A. Yes, sir.

36 Q. Whom did he identify? A. The defendant, Robert Crosby.

Q. Did there come a time at No. 9 Precinct that you talked to the defendant? A. I did.

Q. How soon after you got to No. 9 Precinct did you talk to the defendant? A. Less than an hour.

Q. Did you take a statement, sir? A. I did.

Q. What time was the statement started? A. At 5:25 a.m.

Q. What time was it finished? A. Approximately 5:45 a.m.

Q. Was that statement given freely and voluntarily by the defendant Crosby? A. It was.

Q. Were any promises given to the defendant Crosby in return for this statement? A. There was not.

Q. Any coercion or duress involved in getting that statement from the defendant Crosby? A. No there was not.

37 Q. Was he beaten or struck? A. No, he was not.

* * * * *

FURTHER REDIRECT EXAMINATION

BY MR. WHITSETT:

Q. Didn't you tell Mr. Crosby that you were going to play a game and the way this game went was, everytime I ask you a question, if you tell a lie, you are going to get a punch? A. I certainly did not.

Q. And didn't the other officers with you tell him that he was also playing a game, that you were going to give a punch on one side if he told a lie and the other officer would give a punch on the other side? A. No, there were no words like that. I might add his girl friend was there the whole time we were talking to him.

* * * * *

38

ROBERT H. CROSBY

called as a witness in his own behalf, having been first duly sworn, took the witness stand, was examined and testified as follows:

39

DIRECT EXAMINATION

BY MR. WHITSETT:

Q. Your name is Robert H. Crosby? A. That is correct.

Q. Mr. Crosby, where were you living on January 23, 1961, during the hours of 3:30 to 4:30 a.m.? A. I was at 1354 Columbia Road, N.W., Apartment 10.

Q. Was that your home? A. Yes, it was.

Q. Did anything unusual happen on that date and about that hour?

A. About 3:30 that Monday morning, a knock came on the door and it wakened us. We were sleeping, Shirley and I.

I got up and tipped across the floor and looked out the window and there were two uniformed policemen standing in the alley under the light. I looked down the alley again and I didn't see anyone else. So then I heard someone tip through the bathroom and raise the bathroom window, and I peeked through the keyhole and saw this other detective standing in the hall, so I stepped across and went in the closet and got on the floor and started pulling stuff on top of myself.

Shirley told them to wait just a minute until she put on some clothes.

40 So then, she put on some clothes, I presume, because I couldn't see. I was in the closet.

She opened the door -- she didn't open it all the way. I could tell by the way they pushed it; it came all the way back and hit the closet. The closet door was closed and the door came back all the way back. So the police came in and they said, "We are going to look and we are going to look good. If he is in here, he had to go through the floor to get out." Like that. So they walked around the room and went to the window and hollered to the other police and said, "Thank you. If he is in here, he had to go through the floor to get out of here."

I could tell they were searching around. I could tell by the way they was walking around.

So he came to the closet and flashed his flashlight. I seen the light through the clothes. I stopped breathing. I was breathing before and I stopped breathing and he walked away and came back, one of the defendants, I don't know which one it was. And then he started pulling clothes out of the closet and drug me out of the closet and knocked me down on the floor. They started to hit me. My nose bled a little bit. I've got some blood on my pants to indicate that. And they had the handcuffs be-

41 hind me as tight as they could get them. I was in my shorts.

So at that time they just kept on saying, "Hiding like a" -- I don't want to use the word that was used then, but -- hiding like a dog.

He said, "If you had come out of that window, I would have knocked you off." That's what Detective Samen said.

So I didn't go with the police voluntarily. I had no other alternative with the handcuffs on me and they also hit me two or three times.

Q. Did there come a time that they removed you from the premises?

A. Yes, there did.

Q. Was anybody else removed at that time? A. Shirley.

Q. Did there come a time that you arrived at No. 9 Precinct?

A. Yes, there was.

Q. And were you fingerprinted? A. Not at No. 9 Precinct. I wasn't fingerprinted until the next morning at the line-up.

Q. Were you fingerprinted at Headquarters? A. Yes, I was.

42 Q. Were you placed in a line-up? A. I was placed in a line-up with the other people that were going in the line-up that morning.

Q. During the course of these events, were they being done voluntarily? A. No, I was under fear. They had hit me prior to taking me to the station house and I didn't want them to beat me no more.

Q. Did there come a time that you were asked to make a statement? A. Yes, there was. After Detective Samen left Shirley downstairs at No. 9, they took me upstairs to a room and they said to me, "Now we're going to play a little game. Every time you tell me a lie, I'm going to knock you down." So it only put fear into me from arresting me at the house, so I'm going to tell them what they ask me. I don't want to get beat up because I seen what police do to people --

* * * * *

Q. As a result of that fear, did you make a statement? A. Yes, I did.

43 MR. WHITSETT: No further questions of this witness, Your Honor.

* * * * *

CROSS EXAMINATION

BY MR. CAPUTY:

* * * * *

Q. On this occasion, January 23, you say the police beat you up

pretty bad? A. I didn't say they beat me up bad; they hit me two or

44 three times.

Q. You didn't require any medical treatment, did you? A. No, I didn't.

Q. Samen was the one that hit you, is that right? A. Both of them hit me.

Q. After when you were at the jail, did you request Samen to see what he could for Shirley Johnson to get her relief or anything like that?

A. No, he told me that at the Precinct, that he would try to do that himself.

Q. Two weeks later, after you were at the Commissioner, did he talk to you at the jail? A. He tried to get me to confess of some crimes I had nothing to do with.

* * * * *

Q. Did you ask him to see what he could do for Shirley Johnson to get her some relief? A. I didn't ask him anything. He told me he had

45 did that, which he told me that morning that they arrested me that he was going to try to get her put back on public assistance. I didn't ask him to do anything for me.

Q. At the time this statement was given, you gave this statement at the precinct at 5:25 on the 23rd, didn't you? A. Yes, I did, under fear.

Q. Fear of what? A. Of being beaten.

Q. Did they beat you? A. Not at the precinct; they hit me a number of times at the house.

Q. Did you complain to anyone at the precinct to say that you wanted to see the Lieutenant or Captain, that you were not going to sign the statement? Did you make any complaints? A. No, I didn't. Do you know why?

Q. No.

* * * * *

46

REDIRECT EXAMINATION

BY MR. WHITSETT:

Q. Mr. Crosby, why did you not complain to the Lieutenant or

Captain or ask to see one of those officers? A. Because on May the 28th of 1960, they took me out of my house the same way without a warrant and got me at No. 9 Precinct and said that I made a false report to the police officers, and I got 7 days.

Q. Did you ask to see the Captain or the Lieutenant? A. When I got arrested on May 28th?

Q. Yes. A. Yes, I did.

Q. As a result of your request to see the Captain, what was done? A. I went up to the detective's office to give a statement and when they brought me back downstairs, my mother paid the fine. They had me charged with making a false report to police officers and charged me \$100.00 fine and I went to court with it.

* * * * *

52 THE COURT: I think it will make a substantial difference in the ultimate ruling in this case as to whether there was an outstanding warrant at the time the defendant was arrested.

I want to afford defendant's counsel an opportunity to check into this matter further. I will continue this motion until next Friday to give you a chance, with all of your other responsibilities, to check into this matter and I will accept further facts or testimony at that time and hear any further arguments you want to make.

* * * * *

54

Washington, D. C.
Friday, March 3, 1961

* * * * *

56

MR. WHITSETT: Your Honor, at this time I would like to make a representation to the Court that after having argued the motion on last Friday, I did go to the Municipal Court to make a further check on whether a warrant had been issued. My finding was that they did find that a warrant had been issued and that it was applied for on December 19 and issued on December 20th.

THE COURT: An arrest warrant was outstanding as of December 20th, is that right?

MR. WHITSETT: It was.

MR. CAPUTY: I have the arrest warrant which was issued and which was nolloed on the 23rd of January, as the officer testified.

THE COURT: Let me see the warrant.

(Document handed to the Court).

* * * * *

61 THE COURT: I think under the circumstances of this case, the Court is required to deny the motion to suppress. The Court will do so.

* * * * *

62 MR. CAPUTY: I have seen it. I got a copy of it. I don't think he states anything there that would warrant a mental examination. I think this motion if filed just for the purpose of delay, as is the custom of this lawyer. * * *

* * * * *

63 THE COURT: The allegations in your motion, all emanating from the defendant, sound very much like a malingering but the hospital authorities say they can distinguish that type of motivation.

I will approve an order committing the defendant for a period of
64 30 days. If the hospital authorities can't satisfy themselves in that time, I will extend the period of commitment. I will grant your motion.

* * * * *

[Filed March 3, 1961]

ORDER

Upon consideration of the motion by defendant, for an examination of the mental competency of the defendant, pursuant to Title 24, Section 301, of the District of Columbia Code, as amended August 9, 1955, and the representations made in support thereof, it is this 3 day of March, 1961,

ORDERED, that the defendant be and he is hereby committed to Saint Elizabeths Hospital for a period not to exceed thirty (30) days for

examination by the psychiatric staff of that hospital and that after such examination a report be made to this Court as to:

(1) Whether the defendant is presently so mentally incompetent as to be unable to understand the proceedings against him or to properly assist in the preparation of his defense herein; and

(2) Whether the defendant, at the time of the alleged criminal offense, committed on or about December 19, 1960 was suffering from a mental disease, or defect, and if so, whether his criminal act was the product of his mental condition; and it is

FURTHER ORDERED, that in the event there is no bed immediately available at Saint Elizabeths Hospital the defendant remain in the District of Columbia Jail to await transfer to Saint Elizabeths Hospital when a bed becomes available, and it is

FURTHER ORDERED, that upon receipt by the Court of the report of the Saint Elizabeths Hospital of that hospital, the United States Marshal, or his designated deputy, is hereby authorized to bring the defendant, Robert H. Crosby before this Court for such further proceedings in this matter as may be necessary, or, in the event the hospital report indicates that the defendant is competent to stand trial, the United States Marshal, or his designated deputy, is hereby authorized to transport the defendant to the District of Columbia Jail to await further action of this Court.

/s/ Edward A. Tamm
JUDGE

/s/ Victor W. Caputy
Assistant United States Attorney

Attorney for the Defendant

[Filed March 30, 1961]

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Saint Elizabeths Hospital
Washington 20, D.C.

81,179

* * *

* * *

March 28, 1961

The Clerk
Criminal Division
United States District Court
for the District of Columbia
United States Courthouse
Washington 1, D. C.

Dear Sir:

Mr. Robert H. Crosby (Criminal Number 89-61), was committed to Saint Elizabeths Hospital on March 3, 1961, for a period not to exceed thirty days, upon an order signed by Judge Edward A. Tamm, to be examined by the psychiatric staff of this hospital. It was further ordered that a written report be submitted to the Court regarding the patient's mental condition, mental competency for trial, mental condition on or about December 19, 1960, and causal connection between the mental disease or defect, if present, and the alleged criminal act.

Mr. Crosby's case has been studied intensively since the date of his admission to Saint Elizabeths Hospital and he has been examined by several qualified psychiatrists attached to the medical staff of Saint Elizabeths Hospital as to his mental condition. On March 27, 1961, Mr. Robert H. Crosby was examined and the case reviewed in detail at a medical staff conference. We conclude, as a result of our examinations and observation, that Mr. Robert H. Crosby is mentally competent to understand the nature of the proceedings against him and to consult properly with counsel in his own defense. We find no evidence of mental disease existing at the present time nor on or about December 19, 1960. He is not suffering from mental deficiency.

Sincerely yours,
Winfred Overholser, M.D.
Superintendent

* * *

[Filed July 16, 1962]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
Monday, May 1, 1961.

The above-entitled matter came on for trial at 2:15 p.m. before the HONORABLE JOSEPH R. JACKSON, Judge, and a jury.

* * * * *

11

GEORGE K. HADEED

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Your name is George K. Hadeed? A. Yes, sir.

12

Q. And where do you work, Mr. Hadeed? A. I work at 1422 15th Street, Northeast.

* * * * *

Q. Were you working, or are you the owner of the place? A. We are the owner.

Q. 1422 15th Street, Northeast? A. Yes.

Q. What is that? A. Grocery store.

Q. Were you working there on December 19, 1960? A. Yes, sir.

Q. Are you the owner of that store? A. My wife is owner.

Q. Now, directing your attention to December 19, 1960, were you at the store on that day? A. Yes, sir.

Q. And in the afternoon of that day were you in the store?
A. Yes, sir.

Q. Were you alone or was someone with you? A. Nobody was in the store; nobody in.

Q. Now, did there come a time in the afternoon of that day that something happened in the store? A. Yes, sir.

13

Q. And about what time was it that it took place? A. I think 2:30.

Q. Now, will you in your own words tell the Court and jury what

happened on this day around 2:00 or 2:30 on December 19th? What happened? A. I was in the store when this guy comes in the store and he told me, give me a piece of candy.

THE COURT: Will you talk into the microphone.

THE WITNESS: I give him a Baby Ruth. I give him the piece of candy and he gave me 10¢. I went to the register. I give him the 5¢ and then I went back to the register. After that he was after me behind the register with a knife.

BY MR. CAPUTY:

Q. What did he say, if anything? A. He said, "Son of a bitch, open."

Q. And after that? A. And then I grabbed his hand. I grabbed his hand with my hand and then the knife between his hand and my hand and my hand was cut. After that I started to striking the boy. He hit me on my eye.

Q. When did he hit you on the eye, before you struggled with the knife or after? A. No, after I get cut. And then after that I put him out-
14 side. When he gets outside he left the knife with me and then he run away.

Q. Now, do you see that person here in the courtroom? The person who said, open the register you so and so; do you see him?

MR. WHITSETT: Objection, Your Honor. I would like to approach the bench.

MR. CAPUTY: Oh, if Your Honor please --

THE COURT: No, you needn't approach the bench.

Do you see that man here today; yes or no?

THE WITNESS: Yes, sir.

THE COURT: All right, point him out.

MR. CAPUTY: Come down here and point him out.

THE WITNESS: There is the one.

MR. WHITSETT: Your Honor, I wish to make a motion on the ground of illegal arrest.

THE COURT: Wait until it comes around. There has been no arrest shown here yet. This man testified that he sees the man in court

who committed the crime. And the record will show he identified him.

MR. CAPUTY: Your Honor, since he is talking before the jury on matters of arrest, that has been gone over before.

MR. WHITSETT: Your Honor --

THE COURT: Here, keep still a moment.

15 MR. CAPUTY: He has gone into this question and there has been produced into the Court --

MR. WHITSETT: There was an arrest time. At the time of this individual's arrest --

MR. CAPUTY: I don't know what he is talking about.

THE COURT: I don't know either.

MR. CAPUTY: If you want to entertain it, Your Honor, you may.

THE COURT: I am not going to entertain it now.

BY MR. CAPUTY:

Q. Now, did that happen --

MR. WHITSETT: Your Honor, may the record show --

THE COURT: The record shows what you have said and what I have said and what Mr. Caputy has said.

BY MR. CAPUTY:

Q. Did that happen here in the District of Columbia? A. Yes, sir.

* * * * *

16 Q. All right. At number 9 precinct station what, if anything, did you do at number 9 precinct station on January 23d? A. I was there. They took me over there and then I see a line with 5.

Q. 5 what? A. 5 men.

Q. Did you identify anybody?

MR. WHITSETT: Objection, Your Honor.

THE COURT: One minute. Keep still, will you.

THE WITNESS: I identified him. He was --

THE COURT: Who did you identify? Who?

THE WITNESS: This man.

THE COURT: This man that you pointed out?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: I identified him and I put my hand on him.

BY MR. CAPUTY:

Q. Now, as you faced the line-up --

MR. WHITSETT: Your Honor, may we approach the bench?

THE COURT: No, you may not; you may keep still.

* * * * *

17

BY MR. CAPUTY:

Q. Did he say anything at that time? A. Yes, he say, "I go in to rob you but I don't take any money."

Q. Now, did you require any hospitalization, any treatment at the hospital? A. Yes, they took me to the hospital. They put 4 stitches in my hand and then they take x-ray for my eye because I can't see out of my eye.

Q. Now, did you keep the knife? A. Yes, I keep the knife.

Q. What did you do with the knife? A. The police, they took it from me.

18

MR. CAPUTY: May I have this knife marked, if Your Honor please, as Government's Number 1 for Identification?

THE COURT: You may.

(Government Exhibit No. 1 was
Marked for Identification).

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as Government's Exhibit 1 for Identification and I ask you to examine this knife and tell us whether you can identify it? A. That is the knife.

Q. The knife what? Who had it? A. He had it.

Q. When?

MR. WHITSETT: Objection.

THE COURT: Overruled.

THE WITNESS: On the 19th.

MR. WHITSETT: Objection, Your --

THE COURT: Once the Court has ruled don't talk any further.

MR. CAPUTY: I have no further questions, Your Honor.

* * * * *

23

CHARLES C. SAMEN

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Your name, sir, is Charles C. Samen? A. That is right, sir.

Q. Detective of the Metropolitan Police Force, District of Columbia?

24

A. Yes, sir.

* * * * *

26

Q. Now, did there come a time, sir, as part of your investigation, that you went anywhere to try to apprehend someone, sir? A. Yes, sir.

Q. And whom were you looking for, sir? A. Robert Henry Crosby.

MR. WHITSETT: Your Honor, at this time I think the officer is about to go into the arrest, and I would like to move to suppress.

MR. CAPUTY: I haven't come to that point yet.

THE COURT: You just wait, please. You are very premature in all of these objections, Mr. Whitsett.

27

BY MR. CAPUTY:

* * * * *

28

Q. Now, directing your attention, sir, to January 23d, 1961, did you make an arrest of this defendant? A. I did, sir.

29

Q. Where? A. 1354 Columbia Road, Northwest.

Q. Did you have an arrest warrant? A. I did, sir.

Q. What kind of an arrest warrant? A. A felony for robbery.

Q. Form for this defendant? A. That is right, sir.

Q. Now, did you arrest him? A. I did, sir.

Q. Where did you arrest him? A. He was hiding in the closet on the 3d floor rear.

MR. WHITSETT: Your Honor, again I move to excuse the jury.

THE COURT: Your motion is denied. Proceed, Mr. Caputy.

BY MR. CAPUTY:

Q. Did you have an arrest warrant? A. I did, sir.

Q. And the time that you arrested the defendant was there any other police officer with you? A. Yes, sir, there was.

30 Q. Where did you arrest him? A. On the 3d floor rear of 1354 Columbia Road, Northwest.

Q. What time of the day? A. Approximately 4:30 a.m. in the morning.

Q. And is that this person whom you identified here that you arrested there? A. Yes, sir.

Q. Where, if anywhere, did you take him? A. I took him to the 9th Precinct detective's office.

Q. What time did you get there? A. Approximately 5:00 a.m.

Q. Now, at the time that you had arrested this defendant on January 23d, was there anyone else there in the premises at the time you arrested him? A. Yes, there was.

Q. Who was that? A. Girl by the name of Shirley Johnson.

* * * * *

32 Q. Now, did you have a line-up in Number 9 Precinct? A. I did, sir.

Q. And about what time did you conduct that line-up? A. Approximately a little after 5:00 a.m.

Q. And can you tell us whether that line-up was viewed by Mr. Hadeed? A. It was.

Q. Was any identification made by Mr. Hadeed of anyone in that line-up? A. Yes, there was.

Q. Tell us exactly what he did in that line-up? A. I placed --

MR. WHITSETT: I object.

THE COURT: Your objection is overruled. You may state what he did. What did Mr. Hadeed do?

THE WITNESS: Mr. Hadeed walked into the office where there was 5 subjects in a line-up approximately the same height and weight as the defendant, and Mr. Hadeed walked over to the defendant and placed his arm on him and stated to him, "You are the one that cut my hand with the knife."

BY MR. CAPUTY:

33 Q. All right. Now, what position was the defendant in the line-up as you faced the line-up? A. The defendant was in number one position on the right hand side, the position he chose.

Q. Now, at the time that Mr. Hadeed made the identification of this defendant in that line-up, can you tell us whether any statement was made by the defendant to Mr. Hadeed? A. Yes, the defendant told Mr. Hadeed that he did not get the money.

* * * * *

Q. What did he tell him? A. He told Mr. Hadeed that he was the one in the store but he did not get Mr. Hadeed's money.

Q. Now, did you talk to the defendant after that, sir? A. I did, sir.

Q. Did you get a statement from him? A. I did, sir.

THE COURT: When?

MR. CAPUTY: May I have this statement marked, if Your Honor please, as Government's Exhibit 2 for Identification?

THE COURT: You may.

34 THE DEPUTY CLERK: Government's Exhibit 2 Marked for Identification.

(Government Exhibit No. 2 was
Marked for Identification).

BY MR. CAPUTY:

Q. What time was the statement, do you recall? A. The statement was started at 5:25 a.m. in the morning.

Q. I show you, sir, what has been marked as Government's Exhibit 2 for Identification, which is a 1-page statement, and I ask you to examine it and tell us whether you can identify it?

MR. WHITSETT: Your Honor, again I move the jurors be excused.

THE COURT: Your motion is denied.

THE WITNESS: Yes, sir, that is my statement, that is the statement taken by me from the defendant.

MR. CAPUTY: May we approach the bench, if Your Honor please?

THE COURT: You may.

(AT THE BENCH:)

MR. CAPUTY: If Your Honor please, I have no objection to satisfying the desires of counsel if he wants to go into this statement. We have gone into this before.

THE COURT: With him?

35 MR. CAPUTY: On a motion to suppress, and he made an exact motion like this. The motion was denied. If he wants to go into it again --

THE COURT: If you just want to use up useless time go ahead. If you have gone over this before and it has been denied --

MR. CAPUTY: I don't imagine it will take up too long a time.

MR. WHITSETT: Of course, my motion before went to the identification and the confession and these fingerprints.

THE COURT: There hasn't been anything gone in concerning fingerprints. The line-up and the identification is perfectly proper, as far as I have seen it. You will have a chance to cross-examine this officer concerning the line-up or anything in connection with it.

MR. WHITSETT: Your Honor, I think I am bound in behalf of the defendant to have the jurors excluded.

THE COURT: For what?

MR. WHITSETT: Because the arrest was illegal.

THE COURT: Where is the arrest illegal? You show it. Here is an arrest made with a warrant. Heavenly day, man.

MR. WHITSETT: Your Honor, he did not have the warrant in his possession.

MR. CAPUTY: That doesn't make any difference whether he had it in his possession or not.

36 THE COURT: There was a warrant out for him and he knew it?

MR. CAPUTY: Certainly.

THE COURT: I won't listen to your motion. That is all.

* * * * *

(IN OPEN COURT:)

BY MR. CAPUTY:

Q. Showing you Government's Exhibit 2 for Identification, can you

identify that? A. I can.

Q. And how do you identify it? A. I identify it by my signature, Charles C. Samen.

Q. And was that statement given to you by the defendant? A. It was, sir.

Q. And whose language substantially is the contents of Government's Number 2 for Identification? A. I typed it down word for word from the defendant.

37 Q. All right. And at the time that you typed it, did the defendant read it, sir, after you typed it? A. He did, sir.

Q. And did he sign it? A. He did, sir.

Q. Did you witness that? A. I did, sir.

Q. Were any other police officers present at the time that statement was given? A. Yes, sir.

Q. And who was there? A. Private Dennis.

Q. Was there anyone else there at the time the defendant gave that statement? A. There was, sir.

Q. Who was that? A. The defendant's girl friend, Shirley Johnson.

MR. WHITSETT: Your Honor, I object to this complete line of questioning for the reason stated at the bench.

THE COURT: Overruled.

BY MR. CAPUTY:

Q. Was she there from the beginning to the end of that statement?

A. Yes, sir.

38 Q. Did she witness that statement? A. Yes, sir.

Q. Did she sign it? A. Yes, sir.

Q. Were any promises given to the defendant in return for that statement? A. There were none.

Q. Was any inducement given of any kind? A. There was not.

Q. Was there any coercion or threats involved, sir? A. There was not.

Q. Was he advised of his rights? A. He was, sir.

Q. What did you tell him? A. I advised him that any statement he might give to me might be used against him in court, that he was not compelled to make any statement.

Q. Did he give you that statement? A. He did, sir.

* * * * *

CROSS EXAMINATION

BY MR. WHITSETT:

Q. Detective Samen, on the evening that you went to 1354 Columbia Road you did not have a warrant in your possession, did you?

A. No, I did not.

Q. And you were not the officer who had applied for the warrant, were you? A. No, I was not. I was in the hospital.

Q. And you did not read the contents of the warrant at the time that you knocked at the door, did you? A. I don't understand the question.

THE COURT: Had you seen the warrant before you arrested him?

THE WITNESS: Oh, yes, sir.

BY MR. WHITSETT:

Q. But you didn't have it and you didn't advise Miss Johnson what was in the warrant?

MR. CAPUTY: He doesn't have to, if Your Honor please. It is immaterial. As long as this officer has an arrest warrant for him --

THE COURT: Sustained.

BY MR. WHITSETT:

Q. Detective Samen, how did you get inside the apartment? Or let me ask you this. You knocked at the door; or did you knock at the door?

A. My partner knocked at the door.

Q. Where were you? A. I was -- There is a bathroom right next to the apartment where they live and I had gone out the bathroom window out into the fire escape.

Q. Could you see your partner knocking on the door? A. I could.

Q. And isn't it a fact that as Miss Johnson came to the door your partner pushed by? A. No, he did not. I was beside him when Miss Johnson opened the door.

Q. Wasn't it a fact both of you pushed by? A. No, we did not.

Q. Well, when you looked through the door you didn't see Mr. Crosby, did you? A. Do you mean when the door was opened to us?

Q. Yes, you didn't see him, did you? A. No, we didn't.

Q. And then you searched the whole apartment, didn't you? A. We didn't search the whole apartment.

Q. You searched that room, which is a one-room apartment?

A. We searched the closet.

THE COURT: What do you mean the closet, you opened the door?

THE WITNESS: Yes, Your Honor, opened the door.

41

BY MR. WHITSETT:

Q. You first looked under the bed, didn't you? A. Yes, sir.

THE COURT: That is not searching.

BY MR. WHITSETT:

Q. And the closet door was shut, wasn't it? A. It was opened about that much (indicating).

Q. Didn't you testify once before and at that time say the door was closed? A. No, sir.

Q. You didn't testify? A. No, sir.

Q. When you opened the closet door did you see Mr. Crosby? A. I did not open the closet door; my partner opened the closet door.

Q. Well, when the door was opened either by yourself or your partner, did you see Mr. Crosby? A. Shortly thereafter.

Q. Did you see him at that time?

THE COURT: Was he in the closet when you opened the door?

THE WITNESS: Sir, he was hiding under the clothing.

42

THE COURT: In the closet?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. WHITSETT:

Q. Could you see him? A. I didn't search the closet, sir, my partner did.

Q. Were you with your partner at that time? A. Yes, sir.

Q. Could you see him from where you were standing? A. No, sir.

Q. And, Detective Samen, after you saw Mr. Crosby there, is it not a fact that you dragged him on the floor some distance? A. He was taken out of the closet.

MR. CAPUTY: May we approach the bench, if Your Honor please?

THE COURT: You may.

(AT THE BENCH:)

MR. CAPUTY: I want to know whether this lawyer is trying to inject brutality in here; that is what I want to know. Is it a fact that you dragged him out? I would like to know if his purpose is to inject brutality?

THE COURT: You may answer that. Is that your purpose?

MR. WHITSETT: There was a confession, and I think the confession was coerced and that that is part of the coercion.

THE COURT: Go ahead.

(IN OPEN COURT:)

THE COURT: Did you drag him around the floor?

THE WITNESS: No, sir.

BY MR. WHITSETT:

Q. Did you handcuff him? A. Yes, sir.

Q. Were his hands in front of him or behind him? A. He was handcuffed with his hands behind him.

Q. Did he have his clothes on? A. No, he did not.

Q. Did you hear him yell at any point while you were there?

A. No, he did not yell.

Q. Did you see Officer -- Who was the other officer with you that evening? A. Officer Dennis.

Q. Did you see Officer Dennis do anything to him? Did he push him or anything? A. We took the handcuffs off him so he could get dressed.

Q. And during that time there were no yells or screams by the defendant Crosby? A. No, sir.

44 Q. Now, at that time there were two other officers who were outside

1354 Columbia Road, weren't there? A. Yes, sir, there were two uniformed officers in the alley.

Q. And they were out in the back, weren't they? A. Yes, sir.

Q. And later on -- Well, let me ask you this. Did you or Officer Dennis touch the defendant Crosby in any fashion other than to make the normal arrest that you would do on any other occasion? There was no violence? A. No, we placed him under arrest and that was all.

Q. Now, at the time you took the defendant down to the precinct did you have any words with him about making a statement? A. Yes, sir, I advised him of his rights.

Q. Did you not tell the defendant that you were going to play a game with him and that every time he didn't give the right answer that he would get something? A. I certainly did not.

Q. Do you know if a report was received at the precinct as to the description of the person who had committed an offense against Mr. Hadeed? Do you know? A. Yes, sir, there was a description.

45 Q. And what was the height that was given? A. I don't have a copy of that report with me, sir.

Q. Do you know what color clothing that Mr. Hadeed said he was wearing?

MR. CAPUTY: Now, I object. This would be hearsay unless this officer got it himself, if Your Honor please?

THE COURT: Sustained.

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REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Now, at the time that you had gone with the arrest warrant to 1354 Columbia Road, Northwest -- Is that it, sir? A. That is right.

Q. Third floor. Now, I want you to tell me everything you and Dennis did from the time you got to the premises where -- what's her name -- Shirley Johnson lived. A. That is right.

Q. Tell us. A. When we got up to the third floor --

MR. WHITSETT: Your Honor, this is not proper.

MR. CAPUTY: It certainly is proper rebuttal, Your Honor. He has gone into it.

BY MR. CAPUTY:

46 Q. Don't tell us what your partner said. Tell us what you or your partner did in each other's presence there. Did anyone knock on the door?

A. My partner knocked on the door.

Q. Were you there? A. I was sitting on the window sill in the bathroom that leads to the fire escape.

Q. What did he say at the time he knocked on the door, if anything?

A. He knocked on the door and a voice from inside said, "Who is it?"

MR. WHITSETT: I object, if Your Honor please, to this line of questioning.

MR. CAPUTY: It is perfectly proper in answer to what he has gone into, Your Honor.

THE COURT: Your objection is overruled.

BY MR. CAPUTY:

Q. What did the voice from inside say? A. "Who is it?"

Q. Then what? A. My partner said, "Police," and the voice said, "Just a minute." And then I heard a mumble of voices inside the room, more than one person talking.

Q. More than one person talking? A. Yes. And I didn't hear anything else and I went out on to the fire escape which leads to the window to

47 the apartment, to the room, and while I was on the fire escape I saw the defendant go to the back window and look out.

Q. The defendant Crosby? A. That is right, sir.

Q. All right. What else? A. Then I went back from the fire escape back there to the bathroom and the door was open and we walked into the room.

Q. Then when you walked into the room where was he found? A. He was found hiding in the closet.

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PRIVATE THOMAS B. DENNIS

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

48 Q. Will you state your name and assignment? A. Private Thomas B. Dennis, assigned to the 9th Precinct.

Q. What was your assignment on January 23d, 1961? A. I was assigned to a midnight cruiser with Detective Samen.

Q. Now, directing your attention to January 23d, 1961, did you go with Detective Samen to 1354 Columbia Road, Northwest? A. I did, sir.

Q. And about what time of the day was it that you went there?
A. Approximately 4:30 a.m. in the morning.

Q. At the time that you had gone were you in plain clothes or uniform? A. Plain clothes.

Q. Now, when you got there was Detective Samen with you?
A. Yes, sir.

Q. Whereabouts in the premises did you go? A. We went up to the second floor.

Q. Now, will you tell us what, if anything, you did at the time you got there with Detective Samen? A. Detective Samen went into the bathroom and opened up the window and watched the fire escape and I went and
49 knocked on the door of the apartment on the second floor as you go up the stairs, the first apartment door. I knocked on a door and they asked who was there and I told them the police.

Q. Then what happened? A. There passed about 5 or 10 minutes and a young lady came to the door and opened it.

Q. Did you go inside? A. Yes, sir, we did.

Q. Did there come a time that Detective Samen came inside too?
A. There did.

Q. How soon after you went inside did he come in? A. He came right out after the door opened, approximately a minute.

Q. Did you apprehend anyone inside? A. I did, sir.

Q. You yourself? A. Yes, sir.

Q. And where was the person when you apprehended that person?

A. He was just inside the door on the left hand side as you walk in. There is a closet and I apprehended Robert Crosby down in the closet under a bunch of clothes.

50 Q. Now, do you see that person here in the courtroom whom you apprehended covered by clothes in a closet at 1354 Columbia Road, Northwest, on January 23d? A. Yes, sir.

Q. Point him out. A. The gentleman right there (indicating).

MR. CAPUTY: May the record show, if Your Honor please, that the witness has identified the defendant Crosby as the person who he apprehended?

THE COURT: It may.

BY MR. CAPUTY:

Q. Now, where, if anywhere, was the defendant taken after he was apprehended? A. He was taken to the 9th Precinct.

Q. At Number 9 Precinct. Can you tell us whether the complaining witness, Mr. Hadeed, came there? A. He did, sir.

Q. About what time? A. Approximately around 5:00 or 5:15.

Q. At Number 9 Precinct can you tell us whether there was a line-up? A. Yes, sir, there was.

Q. How many people were in the line-up? A. Five, sir.

Q. Was any identification made by the complainant of anyone in that line-up? A. Yes, sir.

51 Q. Who did he identify? A. Robert Crosby.

* * * * *

Q. Now, at the time the complaining witness placed his hand on the defendant Crosby, was any statement made by the defendant Crosby to the complaining witness, if you recall? A. Yes, sir.

Q. What was it? A. I don't exactly remember what it was.

Q. Now, were you at the precinct station at the time that Detective Samen was typing something? A. Yes, sir.

Q. And what was he typing; do you know? A. He took a statement from Robert Crosby.

Q. Was anyone else other than you and Detective Samen there at the time the statement was given by this defendant Crosby? A. Yes, sir.

52 Q. Who was there? A. His girl friend.

Q. Do you know her name? A. Shirley Johnson.

Q. Now, were any promises made to the defendant by Detective Samen in return for that statement? A. No, sir.

Q. Any inducement of any kind? A. No, sir.

Q. Any threats or coercion? A. No, sir.

Q. Now, at the time that that statement was finished, can you tell us whether the defendant Crosby read that statement? A. Yes, sir.

Q. Did he read it? A. Yes, sir.

Q. Did he sign it? A. Yes, sir.

Q. Did you see him sign it? A. Yes, sir.

Q. Did you witness the statement? A. Yes, sir.

53 Q. Now, can you tell us whether Shirley Johnson witnessed that statement? A. She did, sir.

Q. I show you, sir, what has been marked as Government's Exhibit 2 for Identification, which is the 1-page statement, and I ask you to examine it and tell us whether that is the statement that the defendant Crosby gave?

MR. WHITSETT: Your Honor, again I object to this line of questioning on the ground stated before.

THE COURT: Overruled.

BY MR. CAPUTY:

Q. Is that the statement? A. Yes, sir.

* * * * *

CROSS EXAMINATION

BY MR. WHITSETT:

* * * * *

54 Q. You didn't have a warrant in your hand, did you? A. Detective Samen had the warrant.

Q. He had a warrant in his possession that day? A. Yes, sir, a Commissioner's Warrant.

Q. What kind of warrant? A. Commissioner's Warrant for robbery.

Q. Are you certain of that? A. Positive.

Q. If I told you a Commissioner's Warrant had never been issued would that be the truth or false? A. I understood that it was a Commis-

55 sioner's Warrant. I saw a warrant but I am not sure it was a Commissioner's Warrant, but it was a warrant for the subject's arrest.

Q. You saw Detective Samen with a warrant in his hand on that day? A. On that day?

Q. Yes. A. I don't know if he had it in his hand. He was behind me. But he showed me the warrant before we went up there.

Q. Well, at the time he entered the apartment did he have a warrant? A. He did. I assumed he did.

Q. But you don't know?

THE COURT: Well, if you didn't see it you would have to assume it.

THE WITNESS: I had seen the warrant at the precinct.

BY MR. WHITSETT:

Q. Where had the warrant been issued from? A. I am not sure. I couldn't tell you.

Q. Was it a Commissioner's Warrant?

THE COURT: He told you he doesn't know.

THE WITNESS: I believe it was a Commissioner's Warrant but I am not absolutely positive.

BY MR. WHITSETT:

56 Q. Would this help you any? A. I believe that was the warrant but I don't know.

Q. You don't know what type of warrant was issued then, do you?

MR. CAPUTY: It doesn't make any difference.

THE COURT: I was just about to ask what difference that makes, Mr. Whitsett, as long as it was a warrant, a valid warrant. It doesn't matter who issued it.

BY MR. WHITSETT:

Q. And then at the time you entered the apartment there was nothing said about a warrant, was there? A. I really don't remember.

* * * * *

57 Q. Now, how did Mr. Crosby get from inside the closet outside the closet? A. I pulled him out.

Q. And how did you pull him, by his hand or by his feet? A. I had him by an arm.

Q. Who had the other arm? A. Nobody.

Q. And did you kick him? A. No, sir.

58 Q. Did you hit him in any way? A. No, sir.

MR. CAPUTY: I assume, if Your Honor please, that he is going to place some evidence here that that happened.

THE COURT: I assume he will.

MR. WHITSETT: Your Honor --

THE COURT: Go ahead.

MR. CAPUTY: He can't ask this type of question, if Your Honor please, unless he is going to back it up.

THE COURT: I hope he will be able to. If he isn't that will be a matter for you to tell the jury, I think. Go ahead now.

BY MR. WHITSETT:

Q. Were the handcuffs placed on Mr. Crosby with his hands in front of him or in back of him? A. In the back of him.

Q. And how was Mr. Crosby dressed? Was he fully clothed?
A. No, I believe he had a T-shirt on and a pair of shorts. I am not sure if he had a T-shirt on or not. He had a pair of shorts on.

Q. During the time you were there, did you hear Mr. Crosby holler or scream? A. No, sir.

59 Q. Did you take Crosby to the precinct in his shorts? A. No, sir.

Q. Who put his pants on? A. He did.

Q. Didn't Miss Shirley Johnson put his pants on for him? A. No, sir.

Q. Didn't she ask you to allow the placing of the handcuffs on the

front so he could put some clothing on? A. No, sir. I released one of the handcuffs and he put his own clothes on.

Q. Now, at the time you took him to the precinct and you were speaking in terms of this statement, did you hear anyone say to Mr. Crosby you were going to play a game and if you didn't get the right answers you were going to give him something? A. No, sir.

* * * * *

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CHARLES C. SAMEN

was recalled as a witness by and on behalf of the Government and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Did you go down to Municipal Court to get that warrant when recess was called? A. I went over there and couldn't get it.

Q. Where is the warrant? A. In possession of the defense attorney.

THE COURT: You get that warrant now. Go and get that warrant now without delay, pronto, tout de suite, post haste; any of those things. How does it happen that counsel for the defense has that warrant?

* * * * *

62

MR. CAPUTY: And I would like to offer it for the purpose, if Your Honor please, that there was a warrant outstanding for the arrest. And may I read it, if Your Honor please, for this limited purpose.

MR. WHITSETT: Objection to the reading of the warrant.

THE COURT: He is not reading it.

MR. CAPUTY: I would like to read it. I don't want to read the statement of facts. If he wants the statement of facts he could have it all read in. I want it just for a limited purpose. And if the request is made by the jury later they will only receive this and nothing else.

THE COURT: Very well.

MR. CAPUTY: (Reading)

"To the Chief of Police, District of Columbia: Whereas, Louis Blancato, Jr. has upon oath here before me, Robert E. Gaskins, a

63 "deputy clerk for the Municipal Court of the District of Columbia,
declared on the 19th day of December, 1960 -- "

THE COURT: You might face the jury. They will hear you better.

MR. CAPUTY: [Continuing Reading]

" -- Robert Crosby did by force and violence," et cetera, et cetera,
if Your Honor please; and this warrant was issued, and it was sworn to,
by Judge John Lewis Smith, Jr. of the Municipal Court. It was issued on
the 20th day of December, 1960.

THE COURT: He is the Chief Judge of that Court?

MR. CAPUTY: Chief Judge. That is all the purpose of that.

At this time, if Your Honor please, I would like to offer Government's
Exhibit 2 for Identification into evidence. That is the statement.

THE COURT: You can make any objection you have to it.

MR. WHITSETT: I object on the ground that the arrest was illegal.

THE COURT: Overruled.

(Government Exhibit 2 was
Received in Evidence).

MR. CAPUTY: If Your Honor please, may the record show this mo-
tion to suppress was argued before another Judge and the motion was de-
nied, since he is talking like this in front of the jury?

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THE COURT: The record may so show.

MR. CAPUTY: Now, at this time, if Your Honor please, I would like
to read Government's Exhibit 2.

THE COURT: You may.

MR. WHITSETT: I object.

THE COURT: Has that been received in evidence yet?

MR. CAPUTY: I have offered it.

THE COURT: It may be received over the objection of counsel.

MR. CAPUTY: Will you mark it as in evidence?

THE DEPUTY CLERK: Government Exhibit 2, statement, was re-
ceived in evidence.

MR. CAPUTY: (Reading) "Metropolitan Police Department, Wash-
ington, D. C." This is Government's Exhibit 2.

"Statement of Robert Henry Crosby C-M-21 of 1354 Columbia Road, Northwest, concerning the holdup of the Victory Market located at 1422 15th Street, Northeast, on December 19, 1960, at 2:10 p.m. Statement taken in the 9th Precinct Detective's Office starting at 5:25 a.m., January 23d, 1961, by Detective Charles C. Samen of the 9th Precinct.

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"At about 2:00 p.m. Monday, December 19, 1960, I was at a friend's of mine's house at 1510 Isherwood Street, Northeast, talking with my friend, and after a few minutes I left and walked across the street to the Victory Market located at 1422 15th Street, Northeast, to buy a bar of candy. I walked into the store and saw that the owner was alone and I purchased a Baby Ruth Candy Bar and gave the owner a dime. When he went to the cash drawer to give me change he closed the drawer and started back towards me. When he got to the opening between the candy counter and the regular counter I grabbed him with the intention to rob him. We started fighting so I pulled my hunting knife, which was on my right hip in a leather case, out and then he broke away and ran for the door. I ran after him and grabbed him again and tried to put my knife up to his neck to keep him from going out on the street. He got the door open and when we went out on the street he grabbed the knife and I hit him in the face to get the knife back. After I seen that I could not get the knife back I let it loose and ran through the alley behind the service station.

"Q. Why did you try to rob the man?

"A. I needed the money.

"Q. Did you get the money from the man?

"A. No, I didn't get the money.

"Q. Why did you try to get the knife from the man?

"A. To keep the police from getting my fingerprints off it.

"Q. Did you give this statement of your own free will?

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"A. Yes.

"Q. Is this statement true to the best of your knowledge?

"A. Yes."

The statement is signed "Robert Henry Crosby" and witnessed by "Shirley Johnson" and "Detective Charles C. Samen" and "Private Thomas Dennis."

The Government rests.

THE COURT: Do you wish to make an opening statement?

MR. WHITSETT: The defense rests, Your Honor.

* * * * *

67 MR. WHITSETT: May I make my motion for judgment of acquittal tomorrow?

THE COURT: Make it now. You needn't come up to the bench.

MR. WHITSETT: I make my motion for acquittal on the ground that the Government failed to establish a prima facie case, inasmuch as the only evidence they have pertained to the alleged line-up identification.

THE COURT: I am well aware of all the evidence so you needn't review it. The motion is denied.

* * * * *

68 MR. WHITSETT: Your Honor asked about my instructions?

THE COURT: They are usually submitted in writing, you know.

MR. WHITSETT: Normally --

THE COURT: Normally? I said usually.

MR. WHITSETT: I would have one instruction, to show the confession was given voluntarily.

THE COURT: That is already in the instructions to be given.

MR. WHITSETT: And also the jury take into the circumstances, the circumstances of the identification.

THE COURT: That is a matter of argument.

MR. CAPUTY: May I make a statement, if Your Honor please?

THE COURT: Yes.

MR. CAPUTY: During the course of this trial yesterday the defendant injected police brutality and the Government objected; and he has put

no evidence in and it is reprehensible to ask such a type of question unless you have a basis for it. And there is no basis for that question and he should be admonished.

THE COURT: There has been no evidence on it at all.

MR. CAPUTY: He hasn't put no evidence on and he should be admonished.

MR. WHITSETT: I wish to be heard on that particular point. That is why I asked the jurors be excused.

THE COURT: You can argue that to the jury if you want to, but it is not going to be given in any instructions; and there is really no basis for that.

MR. WHITSETT: I had the witness Shirley Johnson here.

MR. CAPUTY: Unless he puts on a witness he can't ask a witness that question.

70 THE COURT: I understand that perfectly, and I think I made it clear in the record that I think he had no basis for the question unless he can show by some witness that there was any kind of brutality or coercion on the part of the arresting officers.

Bring in the jury.

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77 CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT
BY MR. CAPUTY:

MR. CAPUTY: If Your Honor please.

Members of the jury, there is an axiom that individuals have a certain right, but in addition to having this right, members of the jury, there is a concomitant duty upon that person that has a certain right that he should not infringe upon the rights of other individuals. And this individual Crosby should not have infringed upon the rights of Mr. Hadeed in attempting to take his property on December 19, 1960.

Now, counsel, members of the jury, tells you, he talks about general principles of law which His Honor will instruct you on; and he only tells you, members of the jury, about certain hackneyed phrases. That is all

he told you in his argument. He has made one statement, members of the jury, which is typical of counsel.

MR. WHITSETT: Your Honor, I object to that remark.

MR. CAPUTY: I am going to answer him, Your Honor, the best way I can.

THE COURT: Your objection is overruled.

MR. CAPUTY: You recall throughout this trial he attempted, members of the jury, to inject police brutality into this case. You recall those questions he asked to which the Government objected on the ground the

78 questions were improper unless he had a basis for it. And the basis, members of the jury, to ask that question is to produce that evidence to show there has been police brutality, which he attempted to inject in this case. And he failed to do it and that is typical of counsel.

MR. WHITSETT: Your Honor, I object to this statement by Mr. Caputy. I think it was without foundation and I think he should be admonished about it.

MR. CAPUTY: Yes, there is only one person, if Your Honor please, and I object to his interruptions, if Your Honor please.

THE COURT: Proceed.

MR. CAPUTY: Now, he tells you, members of the jury, in his argument he tells you, can you rightfully believe the testimony of Mr. Hadeed who saw this individual only once after this alleged time and saw him on the 23d of January. Can you not, members of the jury, come to a conclusion that after the crime was committed that Mr. Hadeed had gone to police headquarters? We are bound, members of the jury, by certain rules of evidence and we cannot, members of the jury, tell you of certain things.

But that argument he has made, members of the jury, knowing that we are bound by certain rules of evidence, is baloney. We cannot come in here

79 and tell you whether Mr. Hadeed did or did not go to headquarters in between December 19 and January 23d. But, as reasonable men and women, you can come to a conclusion that after a crime is committed that the individual goes to police headquarters. And I am not saying, members

of the jury, what they do when they go to police headquarters, but he has made that argument because he wants you to come to a conclusion, members of the jury, how can this individual who was attacked a little over a month later come in and point out an individual as the individual who committed the crime and point him out in a line-up.

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JUDGE'S CHARGE

THE COURT:

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In this case there has been evidence of a certain oral confession or admission made by the defendant to the police officers. There has been testimony that this confession or admission was reduced to a written statement by the police officers.

You are instructed, members of the jury, that evidence of such an oral confession or admission by the defendant should be received and viewed carefully, and should be given such weight and consideration as you believe it is entitled to under all the facts and circumstances of the case.

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THE COURT: Bring in the jury.

Mr. Clerk, take the verdict.

THE DEPUTY CLERK: Will the foreman rise.

Madame Forelady, has the jury agreed upon a verdict?

THE FORELADY (Juror No. 1): It has.

THE DEPUTY CLERK: What say you as to the defendant Robert H. Crosby?

THE FORELADY: Guilty.

THE DEPUTY CLERK: Members of the jury, your forelady says that you find the defendant Robert H. Crosby guilty as indicted, and this is your verdict, so say you each and all?

(The jury responded in the affirmative).

THE COURT: Do you wish to have the jury polled?

MR. WHITSETT: No, Your Honor.

THE COURT: Very well.

Ladies and gentlemen of the jury, you are dismissed from any further consideration in this case. You have done your duty well. I can't see how you could have arrived at any other verdict. You will now follow the instructions given you by the Clerk.

* * * * *

[Filed June 12, 1961]

JUDGMENT AND COMMITMENT

On this 9th day of June, 1961 came the attorney for the government and the defendant appeared in person and by his attorney Wilbert L. Whitsett, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of ASSAULT WITH INTENT TO COMMIT ROBBERY as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) to Ten (10) Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Joseph R. Jackson
United States District Judge.

The Court recommends commitment to: an institution other than the Lorton Reformatory.

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